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No. 368

In the Supreme Court of the United States

OCTOBER TERM, 1952

THE DE LA RAMA STEAMSHIP COMPANY, INC.,
PETITIONER

v.

THE UNITED STATES OF AMERICA

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

BRIEF FOR THE UNITED STATES

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OPINIONS BELOW

The opinion of the District Court for the Southern District of New York (R. 46) is reported at 98 F. Supp. 514.[1] The opinion of the Court of Appeals for the Second Circuit (R. 71) is reported at 198 F. 2d 182.

[1] References to the pages of the printed record in this Court are preceded by the letter "R." References to the pages of the two volume printed record in the court below, which is on file in this Court (R. 91-92), are preceded by the letters "Tr."

JURISDICTION

The judgment of the Court of Appeals was entered on July 2, 1952 (R. 77). A petition for rehearing, filed on July 17, 1952 (R. 79), was denied on July 29, 1952 (R. 90). The petition for a writ of certiorari was filed on September 30, 1952, and was granted on November 17, 1952, limited to the question of the jurisdiction of the District Court (R. 91). The jurisdiction of this Court rests upon 28 U. S. C. 1254(1).

QUESTION PRESENTED

Whether the repeal of the War Risk Insurance Act of June 29, 1940, by the Joint Resolution of July 25, 1947, divested the district court of jurisdiction of petitioner's pending libel on a war risk insurance policy, covering a vessel chartered to the United States which was sunk by enemy action while carrying commercial cargo under commercial bills of lading.

STATUTES INVOLVED

The pertinent portions of the War Risk Insurance Act of June 29, 1940, 54 Stat. 689, as amended, 46 U. S. C. (1946 ed.) 1128-1128h, the Joint Resolution of July 25, 1947, 61 Stat. 449, 450, and the so-called general savings statute, R. S. 13, as amended, 58 Stat. 118, now 1 U. S. C. 109, are set forth in the Appendix, *infra*, pp. 33-37.

STATEMENT

This is a suit on a war risk insurance policy issued pursuant to the provisions of the War Risk

Insurance Act of June 29, 1940 (hereafter termed W.R.I.A.), on the Motor Vessel *Dona Aurora*, which was sunk by enemy action on December 25, 1942 (Fdg. 15, R. 41). At the time of her loss, and at all material times, the *Dona Aurora* was operated by petitioner for the United States under a requisition time charter as a merchant vessel, carrying commercial cargo only, under regular commercial bills of lading (Fdgs. 7, 21, 15, R. 39, 43, 41). In accordance with the terms of the charter, and pursuant to the terms of the W. R. I. A., a war risk insurance binder had been issued by the War Shipping Administration on the vessel (Fdgs. 8, 9, 14, R. 39, 41). The amount of insurance stated therein was "Just Compensation Option II"—a valuation equivalent to just compensation as determined in accordance with Section 902 of the Merchant Marine Act of 1936, as amended (46 U. S. C. 1242) (Fdgs. 8, 14, R. 39, 41)).

On December 22, 1944, after failure to reach agreement on the amount of "just compensation" to which petitioner was entitled under the policy, petitioner instituted suit under Section 225 of the W. R. I. A. (46 U. S. C. (1946 ed.) 1128d), *infra*, pp. 33-34. While its suit was pending in the district court, the W.R.I.A. was repealed by the Joint Resolution of July 25, 1947 (61 Stat. 449, 450), *infra*, p. 35. The Joint Resolution contained no savings clause with respect to pending actions. Following a subsequent reference to, and report by, a commissioner (92 F. Supp. 243), the district court entered a final decree in favor of the peti-

tioner in the sum of $2,082,000, with interest,[2] overruling the Government's contention that the repeal had divested the court of jurisdiction (R. 51-54, 62).[3] Noting that the Joint Resolution was directed to the termination of the war and emergency powers contained in more than sixty statutes rather than to the repudiation of liabilities previously incurred under those statutes, the district court held that jurisdiction was preserved by the so-called general savings statute (R. S. 13, as amended, 58 Stat. 118, now 1 U. S. C. 109) (*infra*, pp. 35-36) (R. 52-54).

The court of appeals reversed, holding that repeal of the W. R. I. A. divested the district court of jurisdiction to entertain petitioner's libel. It relied upon a line of cases holding that, absent a savings clause, the repeal of a statute conferring jurisdiction withdraws jurisdiction of all pending cases.[4] The effect of the Joint Resolution, the court held, was to put jurisdiction of all war risk insurance claims in the Court of Claims under 28 U. S. C. 1491 (R. 75, 77). The court pointed out

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[2] Of this sum, only $1,082,000 was actually owing. On April 23, 1947, and May 16, 1947, two payments totaling $1,000,000 had been made to petitioner without prejudice to petitioner's cause of action and without prejudice to any rights of the Government (R. 29-31, 64).

[3] The valuation issue was referred to the commissioner in October, 1948 (R. 32), and a report was made by him in March, 1950 (Tr. 825). The commissioner's valuation was confirmed in August, 1950 (R. 36). The issue now before this Court was first raised by the Government in March, 1951, at the trial.

[4] *Insurance Company* v. *Ritchie*, 5 Wall. 541; *Hallowell* v. *Commons*, 239 U.S. 506; *Bruner* v. *United States*, 343 U.S. 112.

with reluctance, however, that it had no power to transfer the suit to the Court of Claims. (R. 77).[5]

SUMMARY OF ARGUMENT

Although Government counsel argued in both courts below that repeal of the W.R.I.A. by the Joint Resolution of July 25, 1947, divested the district court of all jurisdiction of petitioner's pending libel, our position here, after further consideration of the problem, is different. Apart from the possible applicability *vel non* of the general savings statute, there are two grounds—not presented below—on which the district court's admiralty jurisdiction may have been preserved.

I

A. It may well be that the court below was correct in holding that the general savings clause (1 U.S.C. 109, *infra*, pp. 35-36) did not preserve the district court's jurisdiction. To begin with, it is settled that the sovereign is not bound by a statute, in general terms, which would deprive it of pre-existing rights or privileges. And the language of the general savings statute itself suggests that it is inapplicable to claims against the United States. Further, as the court below pointed out, this Court has apparently drawn a distinction in general

[5] See *Walsh* v. *United States*, 105 F. Supp. 816 (E.D. Pa.); *Bare* v. *United States*, 107 F. Supp. 551 (M.D. Pa.). Cf. *American Const. Co.* v. *United States*, 107 F. Supp. 858, 862 (C. Cls.).

It may be noted that petitioner instituted suit in the Court of Claims on December 6, 1948, while the instant libel was pending in the district court (Tr. 1445). See *infra*, pp. 22-24.

terms between substantive and jurisdictional provisions of repealed statutes, holding that the general savings statute applies to substantive rights.

On the other hand, no decision of this Court holds that the general savings statute fails to preserve the jurisdictional provisions of a repealed statute where those provisions are an intrinsic part of the repealed statute and form an integral part of the machinery for enforcing the substantive liabilities preserved by the general savings statute. If such a distinction between statutes which are jurisdictional only and statutes which not only contain jurisdictional provisions but also create substantive liabilities should be held to be valid, and if the general savings statute applies to suits against the United States, it would follow that, in this case, the district court's jurisdiction was preserved. For here there can be little doubt that Section 225 of the W.R.I.A. is an integral feature of the Act, closely bound up with the liabilities incurred by the United States under the Act.

B. Decisions of this Court have established the principle that, in the absence of a savings clause, the repeal of a statute conferring jurisdiction withdraws jurisdiction of all pending cases. This canon of construction normally accords a repeal its intended effect. It is by no means, however, an infallible key to the purpose of Congress. And this Court has not as yet suggested that the rule is to be applied rigidly, to the exclusion of all other indicia

of the legislative intent. On the contrary, in cases in which the Court has applied it, affirmative grounds supported the conclusion that the repeal was intended to divest the courts of all jurisdiction conferred by the statute, and only speculative grounds existed for an inference to the contrary.

In this case, neither the language nor the legislative history of the Joint Resolution of July 25, 1947, suggests that Congress intended to divest the district courts of their admiralty jurisdiction of pending libels on war risk insurance policies. And all considerations of policy which come to mind suggest that there was no intent or expectation that the repeal would require the dismissal of pending suits in admiralty and the filing of new suits in the Court of Claims. Accordingly, if the common law rule has any flexibility, this may be the type of case in which it should not be applied.

II

Assuming that repeal of the W.R.I.A. divested the district court of the jurisdiction specially conferred under Section 225 of that Act, there are strong grounds for the view that jurisdiction nonetheless remained or was restored to the district court by reason of the general jurisdiction confered by the Suits in Admiralty Act. Putting the W.R.I.A. to one side, the instant claim, arising out of the operation of the vessel for the United States as a merchant vessel, would be cognizable under the Suits in Admiralty Act since marine insurance claims are clearly within the jurisdiction

of the admiralty courts. In incorporating specifically into Section 225 of the W.R.I.A. the provisions of the Suits in Admiralty Act, Congress was not gainsaying its general availability for claims for losses on account of insurance on merchant vessels operated for or by the Government or cargoes owned or possessed by the United States. Rather, Congress was merely conferring on the district courts a broader jurisdiction than they had previously possessed in order to encompass certain types of war insurance claims not otherwise within the scope of the Suits in Admiralty Act, *i.e.*, causes of action arising out of the operation of privately owned and privately operated vessels and of the loss of cargoes privately owned or possessed. Accordingly, even if the 1947 Joint Resolution divested the district courts of their jurisdiction in those additional cases where the specific incorporation of the Suits in Admiralty Act was indispensable to that jurisdiction, the district court nonetheless retained or regained its previous general jurisdiction under the Suits in Admiralty Act in this case.

ARGUMENT

The court of appeals, reversing the district court, held that repeal of the W. R. I. A. by the Joint Resolution of July 25, 1947 (*infra*, p. 35), divested the district court of jurisdiction of petitioner's libel (which invoked jurisdiction solely under Section 225 of the W. R. I. A., *infra*, pp. 33-34). In the two courts below, the Government argued without

qualification for that conclusion. Our position here is different. We are by no means as certain as were government counsel below that the 1947 repeal did remove all jurisdiction under Section 225 from the district court. It may be, however, that the court of appeals was correct in holding that the so-called general savings clause (1 U. S. C. 109) did not preserve the court's jurisdiction of petitioner's pending libel. But there are two grounds—not presented or canvassed below—on which the court's jurisdiction may have been preserved, aside from 1 U. S. C. 109: (a) the common law principle that the repeal of a jurisdictional statute withdraws all jurisdiction, in the absence of a savings clause, might be inapplicable in the present circumstances, and (b) in any event, admiralty jurisdiction remained in the district court by reason of the Suits in Admiralty Act (46 U. S. C. 741-752). The latter argument we affirmatively urge upon the Court as preserving jurisdiction over petitioner's pending libel.

I

The Repeal of Section 225 of the War Risk Insurance Act

A. *The General Savings Clause, 1 U. S. C. 109.*

As this Court announced in *Hertz* v. *Woodman*, 218 U. S. 205, 217, the general savings statute (1 U. S. C. 109)[6] is "a rule of construction applicable,

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[6] The general savings clause provides:

"§ 109. *Repeal of statutes as affecting existing liabilities.*

"The repeal of any statute shall not have the effect to release or extinguish any penalty, forfeiture, or liability incurred under such statute, unless the repealing Act shall so ex-

when not otherwise provided." It is to be read and construed as a part of all repealing statutes as a means of escaping from the serious consequences sometimes incident to the common-law rule of construction whereby the unqualified repeal of a law effectually destroyed rights and liabilities dependent upon it just as if the statute had never existed. *Hertz* v. *Woodman, supra,* at 216-217. There are, of course, grounds for urging that the general savings clause governs here. But there are also substantial reasons why it may be inapplicable in the present circumstances. We shall discuss both sides of the problem.

1. To begin with, although an Act designed to promote the public good and to prevent injury and wrong may properly be construed as applicable to the United States (*Far East Conf.* v. *United States,* 342 U. S. 570; *Nardone* v. *United States,* 302 U. S. 379; *United States* v. *California,* 297 U. S. 175), it is equally well settled that the sovereign is not bound by a statute, in general terms, which would divest it of pre-existing rights or privileges, (*United States* v. *Wittek,* 337 U. S. 346; *United States* v. *United Mine Workers,* 330 U. S. 258; *United States* v. *Cooper Corp.,* 312 U. S. 600).

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pressly provide, and such statute shall be treated as still remaining in force for the purpose of sustaining any proper action or prosecution for the enforcement of such penalty, forfeiture, or liability. The expiration of a temporary statute shall not have the effect to release or extinguish any penalty, forfeiture, or liability incurred under such statute, unless the temporary statute shall so expressly provide, and such statute shall be treated as still remaining in force for the purpose of sustaining any proper action or prosecution for the enforcement of such penalty, forfeiture, or liability."

And the language of the general savings statute itself suggests that it may not have been intended to apply to claims against the United States. Thus, the provision that "the repeal of any statute shall not have the effect to release or extinguish any *penalty, forfeiture, or liability* incurred under such statute * * *" (italics supplied) indicates, by the conjunction of the word "liability" with the words "penalty" and "forfeiture", that the statute is aimed at liabilities incurred by individuals[7] under repealed laws, rather than liabilities assumed by the United States under such laws. Moreover, R. S. 13, from which the present general savings statute (1 U. S. C. 109) is derived, was enacted in 1871 (Act of February 25, 1871, 16 Stat. 431, 432), more than sixteen years before the adoption of the Tucker Act in 1887 (Act of March 3, 1887, 24 Stat. 505), which first made general provision for suits against the United States. Although the Court of Claims had previously been authorized to render final judgments (Act of March 3, 1863, 12 Stat. 765, as amended, 14 Stat. 9), it seems unlikely that the general savings statute was intended, at the time of its adoption, to be applicable to claims *against* the United States.[8]

2. Other reasons for believing that the general savings statute does not apply were advanced by

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[7] Cf. *United States* v. *Reisinger*, 128 U.S. 398. However, the general savings statute is not limited in its application to criminal or penal statutes. *Hertz* v. *Woodman*, 218 U.S. 205.

[8] The general savings clause is clearly applicable, in our view, to claims and actions *by* the United States, or its agencies, against a private party.

the court below in its opinion in the present case. The court declared that the general savings statute applies "only to those provisions of repealed statutes under which substantive rights have been acquired and not to merely procedural statutes such as those which confer jurisdiction upon one court rather than another to entertain litigation for the enforcement of such rights" (R. 74).[9] The distinction thus drawn by the court of appeals between substantive and jurisdictional provisions finds general support in the decisions of this Court. For example, in *Bruner* v. *United States*, 343 U. S. 112, at 117, and in *Hallowell* v. *Commons*, 239 U. S. 506, 508, this Court emphasized, in holding the general savings statute inapplicable, that the amendments involved in those cases effected only a change in the tribunals authorized to hear the claims.[10] In *Great Northern Ry. Co.* v. *United*

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[9] Although we believe that this statement of the court below *may* correctly interpret the general savings statute insofar as *jurisdictional* provisions are concerned, we do not intend to suggest that we have acquiesced in the result reached by the Second Circuit in *United States* v. *Obermeier*, 186 F. 2d 243 (C.A. 2), certiorari denied, 340 U.S. 951. Our petition for a writ of certiorari in that case, No. 557, October Term, 1950, certiorari denied, 340 U.S. 951, took the position that the general savings statute preserves the *limitations* provision applicable to repealed liabilities. However that may be, there is a distinction between limitations and jurisdictional provisions which is not novel; it was apparently made in this Court's recent decision in *Bruner* v. *United States*, 343 U.S. 112, where the Court pointed out that the jurisdictional rule there affirmed does not affect the general principle that a statute is not to be given retroactive effect unless such construction is required by explicit language or by necessary implication, and cited a statute of limitations case for that proposition (*id.*, at 117, n. 8).

[10] In neither *Bruner* nor *Hallowell* did the repealing statute

States, 208 U.S. 452, at 466-468, the Court held that the general savings statute did not preserve the procedures and remedies of the Elkins Act of 1903 after that Act had been amended by the Hepburn Act of 1906. And in *Hertz* v. *Woodman,* 218 U. S. 205, at 218, the Court restated its holding in the *Great Northern* case in these words:

> In the case of *Great Northern Ry. Co.* v. *United States,* cited above, the question was whether the savings clause in the Hepburn act was so plainly in conflict with the rule of construction found in § 13 [of the Revised Statutes] as to limit the actions or liabilities saved to those enumerated therein, but the court held that *as the later clause applied to remedies and procedure, it was not by implication in conflict with the general provision of § 13, which saved penalties, forfeitures and liabilities."* [Italics supplied].

3. On the other hand, although this distinction between jurisdictional and substantive provisions has apparently been drawn in general terms, no decision of this Court holds that the general savings clause fails to preserve the jurisdictional provisions of a repealed statute where those provisions are an intrinsic part of the repealed statute and form an integral part of the machinery for enforcing the substantive liabilities preserved by the general savings statute. Accordingly, petitioner's

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purport to repeal or modify any substantive rights or liabilities. The same is true of the other cases cited at 343 U.S. 115-117.

contention that the general savings statute does preserve the jurisdiction of the district court in the present case is not untenable. Indeed, the Court of Appeals for the Ninth Circuit has so held, in express conflict with the court below. *United States* v. *McNair*, 180 F. 2d 273 (C.A. 9, 1950).[11] See also, to similar effect, *United States* v. *Palletz*, 330 U.S. 812; *United States* v. *Wheelbarger*, 331 U.S. 791; *United States* v. *Fortier*, 342 U.S. 160, 161 n. 3; *United States* v. *Carter*, 171 F. 2d 530 (C.A. 5).[12]

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[11] The court below distinguished the *McNair* opinion upon the ground that the Court of Appeals for the Ninth Circuit may have thought that the jurisdiction of the district court was sustainable under Section 1346 of Title 28 U.S.C., which now incorporates the provisions of the Tucker Act (R. 75). Although inspection of the memorandum submitted by the appellee to the Court of Appeals in the *McNair* case shows that such an argument was made secondarily, in the event that the court should reject the argument that the district court retained residual jurisdiction over the claim under the Suits in Admiralty Act (see *infra*, pp. 25-31), it appears that the sole basis for the court's decision is that the general savings statute preserved the district court's jurisdiction under Section 225 of the War Risk Insurance Act: "* * * The right of recovery therefor continued to exist under 1 U.S.C. § 29 [now 1 U.S.C. 109] * * *." 180 F. 2d at 274. Nowhere in the *McNair* opinion does the Court of Appeals for the Ninth Circuit mention the Tucker Act.

[12] In the *Palletz* and *Wheelbarger* cases, involving ceiling price prosecutions after the expiration of the Emergency Price Control Act of 1942, main concern seems to have centered on the preservation of the substantive liability and no separate consideration seems to have been given to the jurisdictional provisions of the Price Control Act. In our memorandum on the petition for certiorari in the present case (p. 3, fn. 3), we incorrectly stated that the holdings in those cases might be rested on the general criminal jurisdictional statute (18 U.S.C. 3231). At the time of those cases, the present 18 U.S.C. 3231 (which gives district courts jurisdiction "of all offenses against the laws of the United States") was not in effect, and its predecessor (former 18 U.S.C. 546) merely gave jurisdiction over

The language of the general savings statute suggests that its effect on Acts which are solely jurisdictional may differ from its effect on statutes which not only contain jurisdictional provisions but also create substantive liabilities. It provides that "the repeal of any statute shall not have the effect to release or extinguish any penalty, forfeiture, or liability *incurred under such statute* * * *." [Italics supplied] Since no "penalty, forfeiture, or liability" is incurred under a purely jurisdictional statute, such as that involved in *Bruner v. United States*, 343 U.S. 112, there is nothing for the general savings statute to preserve. See 343 U.S. at 117. However, where the repealed statute does give rise to a "penalty, forfeiture, or liability", it can be argued that "such [repealed] statute [as an integrated entirety] shall be treated as still remaining in force for the purpose of sustaining any proper action or prosecution for the enforcement of such penalty, forfeiture, or liability" (1 U.S.C. 109, fn. 6, *supra*, pp. 9-10). If the general savings clause merely preserves substantive liabilities, the additional provision for "sus-

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the crimes defined in Title 18 of the U. S. Code; ceiling price crimes were defined by the Emergency Price Control Act (which is codified in the Appendix to Title 50) and Section 205(c) of that Act, 50 U.S.C. App. 925(c), conferred jurisdiction on the district courts over such crimes.

In *United States* v. *Fortier*, 342 U.S. 160, and *United States* v. *Carter*, 171 F. 2d 530 (C.A. 5), it was implicit in the Government's position that the special jurisdictional provisions of the Veterans' Emergency Housing Act of 1946 survived the statute's repeal, but insofar as those cases sustained jurisdiction the holdings can also be rested on 28 U.S.C. 1345 (formerly 28 U.S.C. 41(1)), giving the district courts jurisdiction of all civil actions by the United States.

taining any proper action or prosecution" would have to be viewed as surplusage. Not only is this distinction between purely jurisdictional statutes and statutes which contain both substantive and jurisdictional provisions suggested by the words of the general savings statute, but preservation of those jurisdictional provisions might be important for consistent and orderly disposition of the liabilities purportedly preserved. See, *e.g.*, *Wood* v. *Hills*, 334 U.S. 210; *150 East 47th Street Corporation* v. *Porter*, 156 F. 2d 541 (E.C.A.).[13]

If this distinction between statutes which are jurisdictional only and statutes which not only contain jurisdictional provisions but also create substantive liabilities be held well founded (and if 1 U.S.C. 109 applies to suits *against* the United States, it would follow that, in this case, the jurisdiction of the district court was preserved by the general savings statute. For there can be little doubt that admiralty suits in the district courts on war risk insurance policies were deemed by Congress to be an essential feature of the W.R.I.A., closely bound up with the liabilities incurred by the United

[13] In this case, for example, a significant difference exists as to the date from which interest would be allowed by the district court under Section 5 of the Suits in Admiralty Act, 46 U.S.C. 745 (time of filing suit), and by the Court of Claims under 28 U.S.C. 2516 (entry of judgment). Transfer of jurisdiction to award recovery from the district court sitting in admiralty to the Court of Claims would thus substantially affect the total amount recovered.

However, it should also be pointed out that divesting the district court of jurisdiction would not necessarily leave the claimant without a forum, since the Court of Claims might be available. See *infra*, pp. 22-24. Preservation of jurisdiction in the district courts is not, therefore, *essential* to enforcement of the preserved substantive rights.

States under that Act, and that the jurisdictional provision made in Section 225 was important to the limited extent that it was necessary (see *infra*, pp. 21, 25-26). Cf. S. Rep. No. 1942, 76th Cong. 3d Sess., p. 10; H. Rep. No. 2499, 76th Cong., 3d Sess., p. 7; Hearings before Committee on Merchant Marine and Fisheries, House of Representatives, on H.R. 6572, 76th Cong., 1st Sess., pp. 21-24, 49-50, 83 (1939).[44]

B. *The common law relating to repeals of jurisdictional Acts*

Decisions of this Court have established the principle that, in the absence of a savings clause, the repeal of a statute conferring jurisdiction withdraws jurisdiction of all pending cases. *Bruner* v. *United States*, 343 U.S. 112, 115-117, and cases there cited. Where there is no savings clause or probative evidence of another intent, the repeal is taken as an expression of legislative intent that no further proceedings be had under the repealed statute. *United States* v. *Tynen*, 11 Wall. 88, 95; cf. *Hertz* v. *Woodman*, 218 U.S. 205, 216; *Railroad Co.* v. *Grant*, 98 U.S. 398, 402.

While this canon of construction may normally accord a repeal its intended effect, it is by no means an infallible key to the purpose of Congress. The decisions of this Court have not as yet suggested

[44] *Standard Oil Co. of New Jersey* v. *United States*, 340 U.S. 54, was decided in the district court after the repeal of Section 225 in 1947. In that case, the Government did not raise the point that the court's jurisdiction had lapsed. Nor was the point raised in the court of appeals or in this Court in *American-Hawaiian Steamship Co.* v. *United States*, 191 F. 2d 26 (C.A. 2), certiorari denied, 342 U.S. 941.

that the rule is to be applied rigidly, to the exclusion of all other indicia of the legislative intent. On the contrary, in cases in which this Court has applied it, affirmative grounds supported the conclusion that the repeal was intended to divest the courts of all jurisdiction conferred, and only speculative grounds existed for an inference to the contrary.

For example, the clarifying amendment to the Judicial Code involved in *Bruner* v. *United States,* 343 U.S. 112, was adopted for the purpose of insuring that all cases involving salary claims of federal employees be centralized in, and confined to, the Court of Claims. And the failure of Congress to adopt a savings clause covering pending cases, as it had done in a previous amendment to the Tucker Act with respect to salary claims of officers, was a clear indication that Congress intended no departure be made from the policy it thereby announced. 343 U.S. at 114-115. Similarly, in *Hallowell* v. *Commons,* 239 U.S. 506, at 508, this Court found that the amendment involved "* * * evinces a change of policy, and an opinion that the rights of the Indians can be better preserved by the quasi-paternal supervision of the general head of Indian affairs. The consideration applies with the same force to all cases and was embodied in a statute that no doubt was intended to apply to all, so far as construction is concerned."

The repealing Acts in *Ex Parte McCardle,* 7 Wall. 506; *Railroad Co.* v. *Grant,* 98 U.S. 398;

Sherman v. *Grinnell,* 123 U.S. 679; *Gurnee* v. *Patrick County,* 137 U.S. 141; and *Gwin* v. *United States,* 184 U.S. 669, reflected a change in policy as to the appellate jurisdiction to be exercised by this Court. Likewise, the repeals and amendments involved in *Insurance Company* v. *Ritchie,* 5 Wall. 541; *The Assessor* v. *Osbornes,* 9 Wall. 567; and *Smallwood* v. *Gallardo,* 275 U.S. 56, evidenced an affirmative change in policy as to the jurisdiction of the federal courts in tax and revenue cases. Moreover, while the repeal involved in *Insurance Company* v. *Ritchie, supra,* and The *Assessor* v. *Osbornes, supra,* did contain a savings clause for pending cases, it was specifically limited to cases between citizens of different states. 9 Wall. at 573. And certainly the repeal of the jurisdictional grants contained in the private bills involved in *De Groot* v. *United States,* 5 Wall. 419, and *Gordon* v. *United States,* 7 Wall. 188, and the express proviso for vacation of all pending proceedings involved in *In re Hall,* 167 U.S. 38, at 40-41, leave no doubt that the repealing statutes were intended to divest the tribunals of their former jurisdiction.

In this case, however, neither the language of the Joint Resolution of July 25, 1947, nor its legislative history suggests that Congress intended to divest the district courts of their admiralty jurisdiction of pending suits on war risk insurance policies. The purpose of the Joint Resolution was the termination of those war and emergency powers no longer considered essential to the war effort. S. Rep. No. 339, 80th Cong., 1st Sess.;

H. Rep. No. 799, 80th Cong., 1st Sess. The W.R.I.A. was only one of the many war and emergency statutes repealed by the Joint Resolution, and it was repealed because " * * * the authority provided thereunder is no longer needed and its effectiveness is limited to the present war." Sen. Doc. No. 42, 80th Cong., 1st Sess., p. 88.

Since no considerations of policy come to mind, or have been put forward, which would be furthered by the "transfer" of jurisdiction from the admiralty courts to the Court of Claims, there is little reason to believe that the repeal was aimed at the remedy provided by Section 225 of the W.R.I.A. Cf. *Lynch* v. *United States*, 292 U.S. 571, 583-585 (holding that the repeal of certain renewable term insurance laws and of provisions for gratuities to veterans was not intended to withdraw the consent given to suit on renewable term insurance policies). Here, as in the *Lynch* case, no specific mention was made in the repealing resolution of the consent to suit, and no consideration was apparently given by Congress to any possible effect of the repeal on pending suits on insurance policies previously issued. It seems probable that the repeal was designed solely to revoke the authority of the War Shipping Administration to issue further war risk insurance, actual hostilities having long since terminated, and that there was no real intention or expectation that it might be read to require the dismissal of pending admiralty suits and the filing of new suits in the Court of Claims.

Certainly, there is no reason to infer that Congress consciously chose to center future war risk insurance litigation in the Court of Claims, when, aside from the enactment and repeal of Section 225, most cases would have been triable in the district courts under the Suits in Admiralty Act (see *infra*, pp. 22, 25-31). Moreover, following the precedent of the War Risk Insurance Act of 1914 (38 Stat. 711, 712), Congress, in the W.R.I.A., deliberately selected the district courts in order to permit every type of war risk insurance claimant to sue the United States in admiralty in the district court for the district in which he resided and to provide "adequate legal machinery for such suits, including provision, by reference to the provisions of the Suits in Admiralty Act, for payment of judgments, payment of interest thereon, and payment of costs, and for countersuits and setoffs, and for removal of suits." S. Rep. No. 1942, 76th Cong., 3d Sess., p. 10; H. Rep. No. 2499, 76th Cong., 3d Sess., p. 7; see Hearings before the Committee on Merchant Marine and Fisheries, House of Representatives, on H.R. 6572, 76th Cong., 1st Sess., pp. 22-23. And, by an amendment of March 24, 1943, Congress rounded out the statutory pattern by the addition to Section 225 of a provision for impleading third parties having or claiming to have an interest in insurance issued under the Act. Again, in the War Risk Insurance Act of Sept. 7, 1950, 64 Stat. 773, Sec. 1212, 46 U.S.C. (Supp. V) 1292, the Congress made the district courts the exclusive forum. See also pp. 24-26.

of the Government's Brief in *Calmar Steamship Corp.* v. *United States*, No. 262, this Term, for a discussion of the advantages of channeling essentially maritime litigation to the district courts, where admiralty and maritime cases are daily tried, where the jurisdictional bases may be pleaded in the alternative, where transfers from one side of the court to the other are possible, and where specialization and expertise in the body of maritime law may be drawn upon so as to achieve uniformity in the rules of decision and procedure.

An additional reason for not supposing that the "transfer" of the pending admiralty cases to the Court of Claims was brought about so casually is the hardship which would be inflicted on claimants under war risk insurance policies by requiring them to abandon their long-pending admiralty suits and begin anew in the Court of Claims. Prior to the enactment and repeal of the W.R.I.A., the Court of Claims had no jurisdiction of suits on war risk insurance policies because such litigation had previously been committed to the exclusive admiralty jurisdiction of the district courts under the provisions of the Suits in Admiralty Act. *United States* v. *Leahy*, 148 F. 2d 462 (C.A. 3); *Levine* v. *United States*, 80 F. Supp. 674 (C. Cls.), certiorari denied, 336 U.S. 936; cf. *Matson Navigation Co.* v. *United States*, 284 U.S. 352; *Johnson* v. *Fleet Corporation*, 280 U.S. 320; *Fleet Corporation* v. *Rosenberg Bros.*, 276 U.S. 202; see *Brady* v. *Roosevelt S.S. Co.*, 317 U.S. 575, 577.[15]

[15] *Libby, McNeill & Libby* v. *United States*, 340 U.S. 71.

Moreover, those claimants, whose counsel did not have the courage completely to abandon the gains attained in their admiralty litigation in the district courts before filing a new suit in the Court of Claims after the passage of the 1947 Joint Resolution, may find that the protection sought by an inactive suit in that court is illusory. Title 28, U.S.C., Section 1500, which became effective September 1, 1948, provides that "the Court of Claims shall not have jurisdiction of any claim * * * in respect to which the plaintiff * * * has pending in any other court any suit or process against the United States * * *." The Court of Claims has held that the application of this section is not conditioned upon the other court's actual jurisdiction of the claim there asserted, and that the prohibition applies irrespective of the other court's jurisdiction. *Frantz Equipment Co.* v. *United States*, 98 F. Supp. 579 (C. Cls.); cf. *Maguire Industries* v. *United States*, 86 F. Supp. 905 (C. Cls.), certiorari denied, 340 U.S. 809; *New Jersey Cotton Worsted Mills* v. *United States*, 9 F. Supp. 605 (C. Cls.); but cf. *May McKinney, et al.* v. *United States*, 62 C. Cls. 180. If the Court of Claims is correct, and the jurisdictional defect is one which is not cured by dismissal of the suit pending in the other court, it would be immaterial that the exigencies and doubts of the matter had led counsel to maintain

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affirming 115 C. Cls. 290, did not involve a policy of war risk insurance issued under the W.R.I.A., but a charter for public operation by the Government which assumed war risks. See also *United States Lines Co.* v. *United States*, 52 F. Supp. 758 (S.D.N.Y.) fn. 20, *infra*, p. 30.

their suits in the district courts. See *Corona Co.* v. *United States*, 263 U.S. 537, 540.

In these circumstances, application of the normal common law rule on repeals of jurisdictional statutes may well have the practical effect of retroactively destroying substantial rights which had accrued to claimants under the W.R.I.A. Claimants who followed the statutory pattern by instituting suit in admiralty on a maritime cause of action may now find that it is too late to file suit in the Court of Claims under that court's six year statute of limitations, 28 U.S.C. 2501, and, as suggested above, those who did file a timely suit in that court may now find their petitions subject to a jurisdictional defect.[16]

In the present case, for example, it appears to be the sheerest happenstance that petitioner has a timely suit pending in the Court of Claims. Suit was brought in that court, not by way of precaution with respect to the effect of the Joint Resolution on admiralty suits, but because of doubt whether petitioner's claim is for the proceeds of the policy —an amount "equivalent to" just compensation (see *supra*, p. 3)—or for just compensation for the requisition of the vessel (Tr. 1444-1449). But whatever may have been petitioner's motive in filing suit in the Court of Claims, it also would ap-

[16] If experience is any guide, application of the common law rule of construction would result in numerous applications to Congress for private bills relieving claimants of the hardship thereby imposed—a result hardly in keeping with the present Congressional policy of transferring the consideration of individual claims to the courts by enactment of statutes waiving sovereign immunity. See *e.g.*, Tort Claims Act, 60 Stat. 842.

pear to be subject to jurisdictional problems under 28 U.S.C. 1500, *supra*, pp. 23-24.

In the light of these considerations, there is warrant for an effort to construe the Joint Resolution so as not to imperil the substantial rights granted by the W.R.I.A. Cf. *R.F.C.* v. *Prudence Corp.*, 311 U.S. 579, 582; *Davis* v. *Department of Labor*, 317 U.S. 249. If the common law rule has any flexibility, this may be the type of case in which it should not be applied.

II

The Repeal of the War Risk Insurance Act Did Not Extinguish the District Court's Jurisdiction under the Suits in Admiralty Act [17]

Sections 221 and 222 of the W. R. I. A. (46 U. S. C. 1128, 1128a) conferred broad authority upon the former United States Maritime Commission [18] to issue marine insurance and reinsurance on vessels, cargoes, and personnel, including, in addition to vessels operated for the United States, privately owned and privately operated vessels, their commercial cargoes, and their personnel. Section 225 (46 U. S. C. 1128d) under which this suit was brought, provided that, in the event of disagreement as to a claim for losses on account of insurance issued under the provisions of the Act, suit might be brought against the United

[17] As noted above (p. 9), this proposition does not appear to have been presented to, or considered by, the court below.

[18] By an amendment of March 6, 1942, 56 Stat. 140, the authority to issue insurance was transferred to the Administrator of the War Shipping Administration in conformance with Executive Order 9054 of February 7, 1942.

States in the district courts of the United States sitting in admiralty under the provisions of the Suits in Admiralty Act, 41 Stat. 525, as amended, 46 U. S. C. 741-752 (*infra*, pp. 33-34).

Such a provision, as noted above p. 21, was deemed necessary to provide adequate and uniform legal machinery for the enforcement of war risk insurance claims of every type against the United States. Since the Suits in Admiralty Act is limited to causes of action arising out of the ownership and possession of cargoes by the United States or the operation of vessels owned by, or in the possession of, the United States, or operated by or for the United States as merchant vessels (46 U.S.C. 741, 742, *infra*, pp. 36-37), it is apparent that Congress, in enacting Section 225 of the W. R. I. A., sought to confer upon the district courts, in addition to their pre-existing jurisdiction, a broader jurisdiction than previously possessed. This was solely in order to encompass those war risk insurance claims of a commercial character which are not within the scope of the Suits in Admiralty Act. Although that extension of jurisdiction was necessary to accomplish the enlarged purposes of the W. R. I. A., it was plainly not needed in cases such as this where the vessel was "at all material times * * * operated by libelant [for the United States] * * * as a merchant vessel" (Fdgs. 15, 21, R. 41, 43). See 46 U. S. C. 741-742.

In incorporating into the W. R. I. A. the provisions of the Suits in Admiralty Act, Congress was not gainsaying its pre-existing availability

for claims for losses on account of insurance on merchant vessels operated by or for the United States. Rather, the incorporation of the Suits in Admiralty Act constituted independent recognition of the suitability of its provisions for extension to the trial of all war risk insurance claims. Because Congress thus regarded the Suits in Admiralty Act as especially well-adapted for suits on war risk insurance policies, and looked with favor upon trial in the admiralty courts for these claims, it should require extremely strong evidence of a change of attitude, from favor to discontent, to read the Joint Resolution as requiring the transfer to the Court of Claims of litigation which, except for the enactment and repeal of Section 225, might have been brought directly under the Suits in Admiralty Act. As we have seen, the legislative history of the repeal offers no evidence whatever that Congress intended so sharp a break with the admiralty tradition of the past.

It is well established that the Suits in Admiralty Act provides a remedy—in fact, the exclusive remedy—for all maritime causes of action against the United States arising out of the operation of merchant vessels for the United States. *Matson Navigation Co.* v. *United States*, 284 U. S. 352; *Johnson* v. *Fleet Corporation*, 280 U. S. 320; *Fleet Corporation* v. *Rosenberg Bros.*, 276 U. S. 202; *Eastern Transportation Co.* v. *United States*, 272 U. S. 675; see *Brady* v. *Roosevelt Steamship Co.*, 317 U. S. 575, 577-579. In the *Matson Navigation* case, for example, this Court held that jurisdiction

of a suit against the United States on a claim under a requisition charter for increases in salary and bonuses paid the master, officers, and crew of a merchant vessel operated for the United States rested exclusively in the district courts under the provisions of the Suits in Admiralty Act. It was unnecessary, this Court said, to examine the requisition charter with meticulous care to see that it was in all respects identical with the usual maritime charter party. It was enough "that the right asserted is upon express contract with the shipowner for its operation of the ship for the Government, and stipulates compensation both for use of the ship and for service rendered and expense incurred in its operation and maintenance, all of which undertakings are characteristically within the admiralty jurisdiction." 284 U. S. at 358.

In *Johnson* v. *Fleet Corporation,* 280 U.S. 320, and the cases decided with it, the Court held that the Suits in Admiralty Act provided the exclusive remedy for claims against the Fleet Corporation for injuries suffered by seamen and for damage to cargo, both allegedly caused by the negligence of the corporation and its agents. And in *Eastern Transportation Company* v. *United States,* 272 U. S. 675, the Court held the United States liable for damages suffered by the owner of a barge which sank after colliding with the sunken wreck of a vessel formerly owned and operated by the United States as a merchant vessel, even though the wreck had lain on the bottom for over thirty days. The argument that the barge owner's claim was not cogniz-

able under the Suits in Admiralty Act, because it was not one which arose out of the operation of the government vessel while employed as a merchant vessel, was rejected as "too fine". Since the Suits in Admiralty Act provides for suits both *in personam* and *in rem*, the Court found it a most natural construction of the Act that the United States be held liable for a tort caused by its negligence in dealing with the wreck of one of its vessels formerly employed as a merchant vessel. 272 U. S. at 692-693.

The claim here asserted against the United States is likewise cognizable, in our view, under the Suits in Admiralty Act. There can be no question that marine insurance claims are within the recognized admiralty jurisdiction. *Insurance Company* v. *Dunham*, 11 Wall. 1, 21; *DeLovio* v. *Boit*, Fed. Cas. No. 3,776 (C. C. D. Mass.); *North German Fire Insurance Co.* v. *Adams*, 142 Fed. 149 (C.A. 7); *Jeffcott* v. *Aetna Ins. Co.*, 129 F. 2d 582 (C.A. 2). Nor can it be doubted that the instant claim arises out of the operation of the *Dona Aurora* for the United States as a merchant vessel. The district court made a finding, not challenged in the court of appeals or here, that the vessel was so operated and employed at all material times (*supra*, p. 3).[19]

[19] At the trial, an argument was presented to the district court that the Lend-Lease cargo carried by the *Dona Aurora* on its outbound voyage determined the character of the vessel as a public vessel (Tr. 943). But cf. *United States* v. *Powell*, 330 U.S. 238. If the nature-of-the-cargo test adopted by the court of appeals in *Calmar Steamship Corporation* v. *United States*, 197 F. 2d 795, is affirmed (No. 262, this Term), the finding of the district court appears to be unchallengeable; if

Moreover, Clause 20 of Part II of the requisition time charter provided that the United States "shall provide and pay for or assume" the war risk insurance on which the claim here is based (Fdg. 9, R. 40). If the claim here were one based directly on the charter provision, the case would fall directly under the *Matson Navigation* case, *supra*, pp. 27-28. Similarly, if the parties had substituted the terms of the war risk insurance policy on which this suit is based in the place of the above-mentioned clause, the case would equally appear to be governed by the *Matson Navigation* case. The fact that the terms of the insurance contemplated by the charter were embodied in a separate instrument should not be controlling or even material. Such an insurance undertaking is no less closely connected with the operation of a merchant vessel than is the matter of payment of the salaries of the master, officers, and crew of the vessel. Indeed, such vessels do not ordinarily leave port, particularly during time of war, unless they are fully insured against marine and war risks. See S. Rep. No. 1942, 76th Cong., 3d Sess., pp. 2, 3, 6, 11; H. Rep. No. 2499, 76th Cong., 3d Sess., pp. 3, 4, 8.[20]

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the view presented in our brief in the *Calmar* case in this Court is adopted, the finding of the district court would appear to be equally unchallengeable. In any event, the facts of this case are neither complicated nor seriously disputed, and a remand for consideration of this question does not appear warranted.

[20] In *United States Lines Co.* v. *United States*, 52 F. Supp. 758 (S.D.N.Y.), the district court dismissed, for lack of jurisdiction, an owner's claim under a Government charter party assuming insurance risks, on the ground that the claim was not within Section 225 because not under a war risk insurance

Accordingly, if, as we think, petitioner's suit is one which, aside from the W. R. I. A., might have been brought directly under the Suits in Admiralty Act, repeal of the W. R. I. A. would not oust the district court of jurisdiction. Even if the Joint Resolution divested the district courts of their jurisdiction in those other cases where the incorporation of the Suits in Admiralty Act into Section 225 of the W. R. I. A. was indispensable to that jurisdiction, the district court retained or regained [21] its jurisdiction under the Suits in Admiralty Act in this case.[22]

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policy. As petitioner points out (Br., p. 24), the vessel was not employed as a merchant vessel but was publicly operated and therefore a public vessel. For this reason, the Suits in Admiralty Act would not apply. The libellant apparently did not claim that there was jurisdiction under the Suits in Admiralty Act and the court did not pass upon that point. The coverage of the Public Vessels Act is probably narrower. See *Canadian Aviator, Ltd.* v. *United States*, 324 U.S. 215; *American Stevedores, Inc.* v. *Porello*, 330 U.S. 446, 450-454; *Eastern S.S. Lines, Inc.* v. *United States*, 187 F. 2d 956, 959 (C.A. 1); *Thomason* v. *United States*, 184 F. 2d 105, 107 (C.A. 9).

Libby, McNeill & Libby v. *United States*, 340 U.S. 71, affirming 115 C. Cls. 290, also involved a public vessel. See fn. 15, *supra*, pp. 22-23.

[21] If jurisdiction under Section 225 of the W.R.I.A. was exclusive rather than concurrent, jurisdiction under the Suits in Admiralty Act would re-attach upon its repeal.

[22] We know of no pending war risk insurance claims which could not have been brought directly under the Suits in Admiralty Act under the view of that Act advanced by the petitioner in *Calmar Steamship Corporation* v. *United States*, No. 262. Under that view, there would seem to be little necessity—if the above argument as to the Suits in Admiralty Act be accepted—for this Court's determining whether such suits also may still be brought under Section 225 of the W.R.I.A., despite the repeal of that section. On the other hand, if the Second Circuit's position on the Suits in Admiralty Act in *Calmar* is sustained, this Court might well determine whether jurisdic-

CONCLUSION

It is respectfully submitted that the dismissal for lack of jurisdiction should be reversed and the case remanded to the court of appeals for consideration of the other assignments of errors taken there on appeal.

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tion under Section 225 of the W.R.I.A. still survives, since some of the pending war risk insurance claims would not then be cognizable under the Suits in Admiralty Act.

APPENDIX

1. Section 225 of the War Risk Insurance Act of June 29, 1940, 54 Stat. 689, 690, as amended, 46 U.S.C. (1946 ed.) 1128d, provides (as it appears in the United States Code):

> In the event of disagreement as to a claim for losses or the amount thereof, on account of insurance under sections 1128-1128h of this title [i.e. the insurance Subtitle of the Merchant Marine Act of 1936, as amended], an action on the claim may be brought and maintained against the United States in the district court of the United States sitting in admiralty in the district in which the claimant or his agent may reside, or in case the claimant has no residence in the United States, in a district court in which the Attorney General of the United States shall agree to accept service. Said suits shall proceed and shall be heard and determined according to the provisions of sections 741-752 of this title [i.e. the Suits in Admiralty Act] insofar as such provisions are not inapplicable and are not contrary to or inconsistent with the provisions of sections 1128-1128h of this title. All persons having or claiming to have an interest in such insurance, or who it is believed might assert such an interest, may be made parties to such suit, either initially or upon the motion of either party. In any case where the Commission acknowledges the indebtedness of the United States on account of such insurance, and there may be a dispute as to the person or persons entitled to receive payment, the United States may bring

an action in the nature of a bill of interpleader against the persons having or claiming to have any interest in such insurance, or who it is believed might assert such an interest, in the District Court of the United States for the District of Columbia, or in the district court in and for the district in which any such person resides. In either of such actions any person claiming to have an interest in such insurance, or who it is believed might assert such an interest, if not an inhabitant of or found within the district within which either of such actions is brought, may be brought in by order of the court to be served personally or by publication or in such other reasonable manner as the court may direct, and if it be shown to the satisfaction of the court that persons unknown might assert a claim on account of such insurance, the court may direct service upon such persons unknown by publication in the Federal Register. Judgment in any such action shall discharge the United States from further liability to any parties to such action, and to all persons where service by publication upon persons unknown is directed by the court. The procedure herein provided shall apply to all actions now pending against the United States under the provisions of sections 1128-1128h, as amended.

2. Section 1 of the Joint Resolution of July 25, 1947, 61 Stat. 449, 450, provides, in pertinent part:

JOINT RESOLUTION

To terminate certain emergency and war powers

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That the following statutory provisions are hereby repealed:

* * * * *

Act of June 29, 1940 (54 Stat. 689, ch. 447) as amended;

* * * * *

Approved July 25, 1947.

3. The so-called general savings statute, R. S. 13, as amended, 58 Stat. 118, now 1 U.S.C. 109, provides:

§ 109. Repeal of statutes as affecting existing liabilities:

The repeal of any statute shall not have the effect to release or extinguish any penalty, forfeiture, or liability incurred under such statute, unless the repealing Act shall so expressly provide, and such statute shall be treated as still remaining in force for the purpose of sustaining any proper action or prosecution for the enforcement of such penalty, forfeiture, or liability. The expiration of a temporary statute shall not have the effect to release or extinguish any penalty, forfeiture, or liability

incurred under such statute, unless the temporary statute shall so expressly provide, and such statute shall be treated as still remaining in force for the purpose of sustaining any proper action or prosecution for the enforcement of such penalty, forfeiture, or liability.

4. The Suits in Admiralty Act of March 9, 1920, 41 Stat. 525, 46 U.S.C. 741, *et seq.* provides in pertinent part as follows (as it appears in the United States Code):

Sec. 1 [46 U.S.C. 741]. No vessel owned by the United States or by any corporation in which the United States or its representatives shall own the entire outstanding capital stock or in the possession of the United States or of such corporation or operated by or for the United States or such corporation, and no cargo owned or possessed by the United States or by such corporation, shall, in view of the provision herein made for a libel in personam, be subject to arrest or seizure by judicial process in the United States or its possessions: *Provided,* That this chapter shall not apply to the Panama Railroad Company.

Sec. 2 [46 U.S.C. 742]. In cases where if such vessel were privately owned or operated, or if such cargo were privately owned and possessed, a proceeding in admiralty could be maintained at the time of the commencement of the action herein provided for, a libel in personam may be brought against the United States or against any corporation mentioned in section 741 of this title [i.e., Section 1 of the Suits in

Admiralty Act], as the case may be, provided that such vessel is employed as a merchant vessel or is a tugboat operated by such corporation. Such suits shall be brought in the district court of the United States for the district in which the parties so suing, or any of them, reside or have their principal place of business in the United States, or in which the vessel or cargo charged with liability is found. The libelant shall forthwith serve a copy of his libel on the United States attorney for such district and mail a copy thereof by registered mail to the Attorney General of the United States, and shall file a sworn return of such service and mailing. Such service and mailing shall constitute valid service on the United States and such corporation. In case the United States or such corporation shall file a libel in rem or in personam in any district, a cross libel in personam may be filed or a set-off claimed against the United States or such corporation with the same force and effect as if the libel had been filed by a private party. Upon application of either party the cause may, in the discretion of the court, be transferred to any other district court of the United States.

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